

Mr. Mumford's communication to the Committee of Elections.

 FEBRUARY 6, 1818.

Committed to the committee of the whole House, to which was this day committed the report of the Committee of Elections, in the case of George Mumford.

To the honorable Mr. Taylor, Chairman of the Committee of Elections,
SIR,

Being about to defend myself against what appears to be a charge that implicates my honor and my character, I ask your attention whilst I make such an exposition as shall exonerate me from the imputation of having taken a seat in Congress, contrary to the constitution or contrary to the principles of an honest man and a gentleman.

Before I enter into the argument, I will briefly relate the facts as far as they are recollected. I was appointed principal assessor at the commencement of the system of direct taxation, and continued until its termination, which happened at the last session of Congress, previous to which term, I had discharged all the duties assigned me by the law, and had settled all my accounts. I did not write a letter to any person saying that I resigned the office, for it would at that time, (whatever it might since) have been extremely ridiculous, as the office had left me. Some time, however, in the spring, I received a letter from the commissioner of the revenue, written under the authority of the act of 3d of March last, which was calculated to clothe me with new power, so that any of the duties which might not have been finished, should be completed. I do not recollect having performed any duty after the receipt of that letter. The election at which I was chosen, was held on Thursday the — of August: on the Thursday following, the sheriffs of the three counties, viz: Rowan, Randolph, and Chatham, composing the 10th district of North Carolina, met, declared me to be duly elected, and gave me their joint certificate to that effect. Early in October I left home for Portsmouth, in New Hampshire, and when on my way, I arrived in the city of Raleigh and presented that certificate to the governor, who, on receiving it, gave me a commission as a representative, bearing date at that time. As I passed through this place, I intended to have remained here a few days and meant to have called on the commissioner of the revenue, for the purpose of giving him all the information I could, relative to the probable business that might arise in the

course of the completion of the collection by the collector. This visit was due from respect to an officer under whose direction I had served, and which, though not official, would have been proper, and which should have been paid, had it been in my power. Having remained at Portsmouth, out of my assessment district, during the intervening period, I returned to this place on the last day of November, and on Monday the first of December, I appeared in the Representative Hall, was qualified by taking the oath to support the constitution, and took my seat. When, as soon as the resolution, inquiring what members held offices was adopted, I made a written communication of my circumstances to the chairman of the committee of elections.

This sir, is the history. You will now please to indulge me while I make some remarks, and in attending to them, you will be good enough to bear in mind, that the inquiry is, *whether I am a member of Congress or not; whether I am in the House or not*; a question so plain that it was not without some difficulty that I brought my mind into a train of reasoning to prove it. Indeed if I had not so much at stake, and if it was not that the question, plain as it appears to me, seems to be doubted by them, or some of them, whose opinions I am bound to respect, and whose votes may be injurious to my rights, I should hardly trouble you to discuss the question. It is more than doubted, for it appears to be taken for granted, if a person holds an office up to the time of his qualification as a member, that it would affect his seat; and it further appears to be taken for granted, that, if a person has held an office at any time since the 4th of March, or subsequent to his election as a representative, it ought to affect his seat; and that a person who has held an office, must write a letter to some one, saying that he resigns it, otherwise the omission would be considered a proof that he continued to hold the office, notwithstanding his qualification and taking his seat. I contend for the contrary of all these propositions, and hope I shall place them in so clear a point of view as to leave no doubt on your mind; and in doing so, will give you the plain words of the constitution, attaching to them, the plainest and most obvious meaning of which they are susceptible. Be so good as to turn to it, and you will find that it is in the second clause of the second section of the first article, that the *qualifications* of a representative are enumerated, viz: "No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen;" and *these are all that are enumerated as qualifications*. After going through with the House of Representatives, the constitution begins with the Senate, and in the third clause of the third section of the same article, enumerates the *qualifications* of a Senator in these words, viz: "No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen;" and *these are all that are*

enumerated as qualifications of a Senator. After having thus mentioned in express terms, the qualifications of each; after having said what shall entitle a person to a seat as a representative; and what a Senator: after having gone through every thing relative to the person of each, until you get to the last clause of the sixth section, it then provides; that "no Senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person *holding* [continuing to hold] any office under the United States, shall be a member of either House *during his continuance in office.*" What, let me ask was the object of this clause? What did the people intend to guard against, when they spoke these words? Let us inquire; and we cannot do so as effectually in any other way, as by seeing what would have been our situation if this clause or any part of it had been omitted in the constitution. Suppose then that that whole clause had been omitted, what would have been the consequence? Would there have been any thing to have prevented the same person from holding United States' offices, while he was a member, or being a member while he held such offices? You must say not. Then may we not fairly conclude that that clause, *taken altogether*, was intended to prevent the occupancy of both at once; but suppose the latter part only, viz: "no person holding any office under the United States, shall be a member of either House *during his continuance in office.*" suppose this had been omitted, what then would have been left that would have prevented a member from being appointed to, or from holding any office, except such as happened to have been created, or to have had their emoluments increased during the time for which he was elected? Surely nothing. Then may we not as fairly conclude, that *this part* of the clause was *intended*, not to prevent the *appointment* of a member to an office, nor to prevent his *acceptance* of it; not to prevent the people from *choosing an officer* to be a member, nor to prevent his *acceptance and qualification as such*, but to provide, that, although you may be appointed to an *old* office, although you may be elected to serve as a member, you shall not, *during your continuance in office*, be a member: you shall not, *during your continuance* as a member, be an officer. Now, sir, let us suppose that the *first part* of the clause only, had been omitted, would there have been any thing to prevent a member from being appointed to a *new office* as well as he can *now* to an *old one*; as certainly not. This part of the clause was, therefore, intended to provide, not merely that a member should not hold a new office during the time he was a member, but that he should not *hold it at all during the time for which he was elected*. Indeed, sir, if the words that make the latter part of this clause, viz: "and no person *holding* any office under the United States, shall be a member of either House *during his continuance in office.*" had stood alone. If they had been intended to have contained *all the condition* that should have entitled a person to a seat, it would have been

a forced construction, and not less forced than unreasonable and unjust to say, that a person who had qualified and taken his seat as a member, ought to have it vacated, because he *had held* an office, without any proof or even a suggestion that he *was then holding it*; and especially after hearing him declare, (as I do and as I did to the committee,) that he does not hold, or continue to hold any office under the United States, and that he has not discharged any duties of any such office since his election as a representative. Is it not indecorous after a man has taken the oath to support the constitution, and thereby qualified himself and taken his seat as a member, to insist that he *does hold an office*, which is as much as to say that he has violated the constitution and his oath, without having *some evidence* that he has discharged, or attempted or wished to discharge, other duties than those of a member. But, sir, these words, viz: "and no person, &c. &c." do not stand alone. They are not a part of a clause merely; they are a part of a sentence. They are included in a period with others, divided only by a semicolon. Their very situation and connection proves that they were not intended to contain the *only condition* or *any condition* which should entitle a person to a seat as a member; that having been provided for in the second clause of the second section as before mentioned. The object of that clause must have been, simply to declare that no officer should be a member, and of course that no member should be an officer, viz: that no person shall be both at once: this must have been the intent and meaning of that part of the clause, because if the other meaning, viz: that no officer should be a member until he had formally resigned, had been intended, would not the convention, instead of putting them where they are, have added them to the second clause of the second section, thus: "no person shall be a representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States; and who shall not, when elected, be an inhabitant of the state in which he shall be chosen; and no person holding any office under the United States, shall be a member of either House *during his continuance in office*;" and even then, sir, it would have been very ambiguous, leaving a doubt, whether you must resign or whether your acceptance of a subsequent appointment did not, in itself, vacate the office. Here it may not be improper to remark that a resignation, viz: a written communication, saying that you resign, is a thing that does not appear to have been contemplated as necessary, it not having been either described or prescribed.

From all which, it seems to be clear, that no person *holding* an office under the United States can be a member, and it is equally clear, that no person *being a member* CAN hold an office. This will bring the question to what it ought to be, viz: whether a member does, by being appointed and qualifying as an officer, vacate his seat; and whether an officer does, by being elected, returned, and qualified as a member, vacate his office; or to reduce them to a single proposition, whether an officer or a member must *resign* the commission,

office, or appointment which he holds, before he can be constitutionally authorized to discharge the duties of one, which is subsequently conferred upon him.

If, sir, you will now suffer yourself to resort to common sense, and common usage, (for here the constitution is silent,) I think you will find, *that a resignation would in many cases be as unnecessary as it would be absurd*, and THAT IN ALL CASES WHEN A PERSON GOES FROM ONE APPOINTMENT TO ANOTHER UNDER THE SAME GENERAL AUTHORITY, IT IS NOT NECESSARY, though in many it is useful, and in all it is respectful. Leaving it to be necessary only in cases where the person wishes to withdraw from the authority under which he is acting, to place himself under *his own* or *that of another*; and then it is not necessary as a means of releasing himself from the employment, but that he may vacate it quietly, that he may save himself from the sentence of a court. Is it not the universal practice and understanding relative to all offices and appointments, (which are incompatible) *that the accepting the last, viz: the being constitutionally and legally initiated into the last, virtually dissolves or vacates the first*; is there an exception from a village council and constable, to the Congress and President of the United States?

Suppose the United States, or the President and Senate in the name and under its authority, was to appoint a member of the House of Representatives to be Secretary of War, could he not accept, qualify, and enter upon the duties of the War Department, until he had either said or written to the House, or to the people of his district, or to somebody, that he resigned his seat. He might have been appointed *pro tem.* before Congress had assembled, could he not act as Secretary until the House met and received his resignation? Suppose the legislature of North Carolina should choose a member of the House of Representatives as one of her Senators, would the Senate refuse to receive him as such, until he had *proved* that he had said or sung, or written a resignation of his seat there? Would they have stopped their proceedings after having suffered him to take his seat to inquire into such a fact? Does the constitution require it? Does common sense demand it? Suppose the House of Representatives had contended that, as he had not resigned, he was still a member of that body, could a justification have been found in the constitution for an attempt to compel his attendance?

Suppose the people should elect a man who was a collector, to be a representative, would he, besides the *qualifications* enumerated in the constitution be obliged to produce proof that he had resigned his collectorship? To whom must he resign; do you say to the Secretary of the Treasury? He did not appoint him: must it be to the President or the Senate, or to both: may it be sent by the mail: it may miscarry; who proves that you did not send it; and is the Secretary of the Treasury to send to the House of Representatives and claim his once subordinate, and take him from the high and important duties assigned him by his constituents, because forsooth a letter did

not happen to get on safely. And does the House intend to expel a member because it does not appear that he has written a few lines to the Secretary of the Treasury, informing him of what is his duty to know, and what he cannot help knowing, viz: that the person who *was collector is now a member*, and of course no longer a collector, the two being incompatible by the constitution which he has sworn to support, and which, it is supposed, is before him? But suppose the people should choose one who had been a principal assessor, (I say had been,) one who had discharged the duties of his office, as long as there were any to perform; one who had continued in that office, as long as that office had continued to exist under the laws prescribing the duties of the assessor, must he still be considered to be an assessor, because a law was passed at a session subsequent to the termination of all his duties, authorizing the Secretary of the Treasury to give the assessors new and distinct powers? Must he still be considered an assessor, notwithstanding he has told you in the oath he has taken, qualifying himself as a member, that he holds no office, civil or military, under the United States? Has he not told you so, and does he not now declare to you the same thing in writing; must he still be considered an assessor whether he agreed to act under this last direction or not, (to the performance of the duties of which there was no compensation allowed,) surely not. Shall I take the liberty to refer you to the act appointing assessors, and the act renewing their authority. On reading them you will find that all the duties were performed. They were obliged to be performed previous to the commencement of the last session of Congress, if done agreeably to any law *then* existing.

You will find from the tenor of the law of the 3d of March last, that Congress acted under the impression that the power of the assessors and that of the Treasury Department had ceased; else why renew it? And having renewed it without affixing any compensation, was I bound to accept it; did I accept it. I say I did not, I performed no duty under it. And does not the very omission to perform the duties amount to a refusal to accept a new office.

But, sir, a resignation is necessary in some cases as I have stated: a constable cannot fairly and quietly vacate his office by merely abstaining from the duties of it, or by refusing to act; nor can an assessor or any other officer. He must give *notice* to the authority that appointed him of his intention, or he will be liable to be sued. But suppose the same court who had appointed him constable should appoint him sheriff, what then? I say he must give notice of his intention to accept, and after acceptance and a regular initiation into the last office, the first is *vacant*; for where is the necessity of a resignation, (that is,) a notice that he intends to quit his constablenesship, *when that information is contained in the notice of acceptance of the sheriffalty*. A judge cannot leave the bench to accept an appointment given him by another authority, without resigning, viz: without giving notice. He must discharge the duties assigned him until he gives notice.

to the person or persons authorized to fill the vacancy, of his intention to withdraw; and he is liable if he does not; for otherwise it would be in his power not only to refuse justice, but to prevent any other person from being appointed to dispense it. But suppose the legislature of a state was to elect one of its judges to be governor, where would be the necessity of a resignation of his seat on the bench. If he came forward and became qualified as governor, all they would or could want to know would be, whether he was governor, and that being before their faces, they would, as in duty bound, proceed to fill the vacancy on the bench. Suppose a legislature were to elect one of the judges to be a Senator in Congress, it would, to be sure, be decorous for him to say *immediately* whether he intended to accept the senatorship or not; that they might proceed during their session to fill the vacancy, but it is not an imperative duty; he may go through a summer's circuit and appear in Congress. Hall on the first Monday of December afterwards, and take his seat: if he did not resign his seat on the bench, viz: *say that he accepted the senatorship* to the assembly, he could do so at any time to the governor; if he did so while they were in session they would fill the vacancy; if he did so to the governor, he and his council would fill it *pro tem*. If he did not give this notice, he would be bound to perform the duty until he took his seat as Senator, and would be liable to be impeached if he refused or neglected to do so. Would the Senate on his arrival, enter into an examination of his conduct; *would they require any thing except an assurance that he was duly elected Senator, and that he came under the description of the third clause of the third section of the first article of the constitution? they would not*; for some of the states permit their state officers to be members of Congress and some do not; it is a matter, therefore, that Congress have nothing to do with, and they would not trouble themselves to inquire into it. When a state officer has been elected and *has taken his seat as a member of Congress*, his state is bound to know it, without notice from him by way of resignation; yet it often prevents difficulties, and is always respectful to give notice of your intentions; they cannot help knowing it, for he is, as to the office he held, politically dead.

Suppose an assessor wishes to retire from his office, he must resign; the Treasury Department must have notice of his intention, in order to provide that the public service shall not be injured, and the assessor would and ought to be liable in damages if he *left* his duty, the same as if he *neglected* it; but when the President and Senate have appointed him to a different and incompatible station, is not his acceptance of that a sufficient notice to the President that he is no longer an assessor; and would he not proceed to recommend another to fill the vacancy; will any one contend that he would not or ought not, until the assessor had resigned? surely not. And is not the case much stronger when it is not merely the President and Senate, (who are but servants of the people,) that makes the appointment, but the

people themselves? Must the assessor go or send, or write to some one of the other servants of the same master to ask *him* to permit the transaction? Is not the President bound to know and to provide for the vacancy in an office which they have, before his face, made vacant, and made it his duty to fill? Do you suggest that he might not know it? Would not the commissioner of the revenue, when he saw the officer with whom he had been in the habit of transacting business setting as a member of Congress, know it? Would he know that the office was vacant if he saw the officer laying dead, and would that be plainer than seeing him sitting as a member of Congress? And are they not *equally* incompatible so long as we have *nature* and the *constitution* for our guide.

Does the President, or the Secretary of State or of the Treasury, or the commissioner of the revenue, recognise me as an assessor? Would they not frown indignantly on the man so lost to every sense of propriety and of virtue, as to attempt to continue to hold an office under their absolute control after he had taken the oath to support the constitution, and his seat as a member of Congress? *Would they not be equally guilty to suffer it?* Can they, now that I have taken my seat as a member of Congress, transact business with me *as an assessor* without a violation of the oaths that they have taken? Would they not be liable to impeachment for continuing or attempting to continue a man in the execution of the duties of an office after that man had become a member of Congress? *Is not that one of the ways in which an UNDUE executive influence could be exercised in this House?*

Besides, sir, in all cases where it is necessary that a resignation should be sent, it is equally necessary that it should be received, and *as important that it should be agreed to*; and all for the reason before given, viz: to enable the officer to retire quietly. But to contend for this proceeding in all cases, would put it completely in the power of the heads of department by refusing to accept, or by omitting to acknowledge the receipt of a resignation, to prevent any one who held an office from taking his seat as a member of Congress. Now, sir, will it be contended that the President, or the Secretary, or the commissioner, (neither of whom pretends to recognise me as an assessor) inteded by saying in their report, "that no resignation had been received from Mr. Mumford," to fix upon him the stigma of having violated the constitution and his oath, and to deprive him of his reputation and his constituents of the representative of their choice. Impossible. If I am asked why the resolution required information "whether any offices were at that time (12th Dec.) so held," and why, by the answer given, "that no resignation had been received from Mr. Mumford," it is left to be inferred that he is yet in office, I could answer that it would not have been proper for the President (or the Secretary of State) to have expressed an opinion as to Mr. Mumford's qualifications as a member. He had simply to state the facts, viz: that Mr. Mumford had been appointed to an office hereto-

fore, and that no resignation had *been received*. He could not with propriety say whether a resignation was or was not necessary, nor (*when the extent of the question is understood*), could it be expected that he would answer as to whether any of the members held offices at that time: no inference ought therefore to be drawn from the report on either of these points. Suppose, sir, that I had held an office after the 4th of March, what then? I was not elected as a representative until August; but suppose that I had held an office up to the first of December, does it follow that I held it up to the 12th, and that *I continue to hold it now*? Does *my having held* prove that *I do hold*?

Do you ask when I became a member? When does a man become a witness, or a juror, or an husband? *Can they become so in an instant*? Can you *make* a mathematical point; is a man married until the last ceremony is performed, yet has he not privileges as a bridegroom, and have not witnesses, and jurors, and representatives privileges also? When does a quill become a pen? before you have put your knife to it, it is a quill, at the instant that it is nibbed it is a pen, and not before.

But after all it may be asked what great object of state policy is expected to result from knowing the offices, the time of appointment, of acceptance, and of resignation, by persons *who are now* members of Congress? Some invidious person might suppose that it was intended that the few names on the list should be known and held up to public view as suspected of executive influence. Some spiteful enemy might insist that it was intended that Mr. Mumford, (who was appointed, accepted, and served to the end in the unthankful and laborious office of principal assessor, and who, (after having so served,) had received, (in his election to a seat in Congress,) the reward due only to the faithful,) should be so held up. But, inasmuch as there is another way of vacating an office besides dying, resigning and dismissing; as there is such a thing as political death, as to an office without political disgrace, and as the office which he *held* has become *vacant in that way*, it would seem to become the moral duty of those who have cast the odium to wipe it off. It may be said, however, that it was not intended or expected that he would have been touched in this business. Sir, I believe it. I am convinced that he was not thought of when that resolution was introduced and passed, but the ill-natured will not be disposed to view it so favorably, which leaves it to be lamented, that a stone should have been thrown in the dark. Only suppose, sir, that instead of *looking back*, that resolution had *looked forward*; and instead of asking the President to tell how many of the members he was secretly and unconstitutionally keeping in office, (for this is really the question;) it had been required of him to communicate whether any and to which of the members of the House of Representatives he had promised an appointment, designating the office, the time promised, whether it was to be accepted, and how far a right to a seat was affected thereby; this stone would not have fallen on my head. Sir, the cautious, had

better look *forward* for danger than backward. Being convinced that it could not have been intended to charge me with a wrong, by a resolution in which I am not named, nor to find me guilty by a report *that does not say that I hold an office*, I shall rest my case here: indeed, sir, I believe I should have paid a better compliment to your understanding and to that of the House, if I had rested it in silence, and I should have done so, but, that the language of the resolution affecting to be the language of the House, made it my duty to treat it with more attention. Sir, I became a member of Congress on Monday the first day of December; I have held no office, nor have I discharged the duties of any since, nor have I held or discharged the duties of any since I became officially informed of my election; and as I possess all the qualifications prescribed by the constitution, I trust that you will so report.

Very respectfully,

I am,

Sir,

Yours, &c.

GEORGE MUMFORD.